AMERICAN RESOURCE MANAGEMENT CORP. (ON JUDICIAL REMAND)

IBLA 82-797
40 IBLA 195 Decided August 20, 1985

Appeal from a decision of the Acting Director, Geological Survey, dated August 28, 1978 (GS-110-O&G), affirming a district engineer's decision to terminate appellant's interest in 22 oil and gas leases. C-0100022-A et al.

Recommended decision adopted as modified; Acting Directors decision affirmed in part and reversed in part.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination

   Where the record shows that at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to the expiration or suspension of the lease.

2. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination -- Oil and Gas Leases: Unit and Cooperative Agreements

   The partial commitment of lands within an oil and gas lease to a unit agreement segregates the land in the lease into separate leases embracing those lands committed to the unit and those lands not unitized. The lease committed to the unit continues in effect for so long as committed, provided that production is obtained within the unit prior to expiration of the term of the lease.

3. Delegation of Authority -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Suspensions

   The Secretary of the Interior may properly delegate the authority to suspend oil and gas leases, and, the party to whom this authority is delegated may act on behalf of the Secretary in approving applications for suspension.

APPEARANCES: Anna W. Drake, Esq., Salt Lake City, Utah, for appellant; David Grayson, Esq., Office of the Regional Solicitor, Salt Late City, Utah, for the Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

American Resources Management Corporation (ARMCO), appealed a decision of the Acting Director, Geological Survey, 1/ dated August 28, 1978, affirming a decision by the district engineer, dated September 1, 1977. The district engineer's decision denied extensions of 22 oil and gas leases for lack of production in paying quantities as of September 1, 1977. 2/ On April 5, 1979, this Board affirmed the decision of the Director, Geological Survey. American Resources Management Corp., 40 IBLA 195 (1979); see also American Resources Management Corp., 36 IBLA 157 (1978). Following this Board's 1979 decision an appeal was taken to the Federal District Court for the District of Utah, Central Division.

On April 28, 1982, the district court remanded the case to the Board for further proceedings consistent with a stipulation signed by the parties on the same date. The stipulation provided that, upon remand, a fact-finding hearing be held and that this Board make a determination on the questions stated in the stipulation.

By order, dated May 12, 1983, the matter was referred to the Hearings Division, Office of Hearings and Appeals. On February 7, 1984, a hearing was held by Administrative Law Judge John R. Rampton, Jr., and on September 17, 1984, Judge Rampton issued a recommended decision finding that timely proof of production capability was not shown for any of the subject leases and sustaining the appealed decision. The recommended decision was forwarded to this Board for further action consistent with the court order. The parties were given 30 days from the date of receipt of the recommended decision to file exceptions to Judge Rampton's findings and to brief questions of law.

1/ Due to reorganization within the Department of the Interior since the initial decision, the functions of the Geological Survey which led to the appealed decision were assumed by the Minerals Management Service and later transferred to the Bureau of Land Management.

2/ The leases subject to this appeal are identified by lease number as follows: C-0100022; C-0100022A; C-0100080; C-0100080-A; C-0100122; C-0100166; C-0100166-A; C-0100255; C-0100270; C-0101832; C-0104442; C-0104444; C-0106267; C-0106267-A; C-0124429-A; C-0124898-A; C-0126430-A; C-127537-A; C-0127609; C-9228. In the decision, it was recognized that leases C-0100022 and C-0100122 had been committed to productive communitization agreements and the Acting Director held that these leases were extended by production under those agreements. Appellant has raised issue with respect to C-0100022 and C-0100122 and those leases will be considered in this decision, as the outcome is unchanged.

A motion for an extension of time to file was submitted by appellant and appellant was granted until December 26, 1984, to file its pleadings. On January 15, 1985, appellant filed a motion for further extension of time and automatic stay. Counsel for appellant advised this Board that an involuntary petition under Chapter 11 of the U.S. Bankruptcy Code had been filed with respect to appellant on June 27, 1984. On January 16, 1985, appellant was given until March 15, 1985, to file pleadings, provided "counsel for the movant Trustee shall diligently and expeditiously seek an order modifying the automatic stay provision of 11 U.S.C. § 326 (1982), to the extent that such section may affect this appeal."

On March 14, 1985, exceptions to the recommended decision were filed with this Board. Appended to the pleadings is an order executed by United States Bankruptcy Judge Glen E. Clark modifying the automatic stay order to allow this appeal to continue to its conclusion. In its statement of exceptions counsel for appellant states:

> The following leases which have been recommended for termination are held by production by virtue of a portion of the lease being committed to an approved Communitization Agreement covering a production well:
>
> 1. C-0100022: A portion of the lease is committed to Communitization Agreement NRM 804, approved by the Oil and Gas Supervisor on May 19, 1975, and covers the SE 1/4 of Section 20, Township 2 North, Range 97 West. The producing well is identified as Caldwell #1-20.
>
> 2. C-0100122: A portion of the lease is committed to Communitization Agreements NRM 805 and 806, both approved by the Oil and Gas Supervisor on May 19, 1975, and covers wells in the NW 1/4 and SE 1/4 of Section 28, Township 2 North, Range 97 West. The wells are identified as Oldland #2-28 (NW 1/4) and Oldland-Fritzlan #1 (SE 1/4).
>
> 3. C-0100255: A portion of the lease is committed to Communitization Agreement NRM 808, approved by the Oil and Gas Supervisor on May 19, 1975, and covers the SE 1/4 of Section 34, Township 2 North, Range 97 West. The well is identified as Government #2-34.
>
> Since the above leases are held by production, the leases in their entirety cannot be terminated. The Recommended Decision should therefore be altered to provide that the above-enumerated leases remain in full force and effect.

No further exceptions to Judge Rampton's decision were taken by appellant. Upon review of the file it was determined that none of the above-stated exceptions could be verified or refuted based upon the administrative record before the Board.

Counsel for the Bureau of Land Management (BLM) 3/ did not respond to the bill of exceptions and, after several weeks and requests for a response, an order to show cause why appellant's exceptions to the recommended decision should not be taken as admitted was issued by the Board on June 11, 1985. In a response to that order an answer was filed on behalf of BLM in which BLM requested "that the Interior Board of Land Appeals recognize that oil and gas leases C-0100022, C-0100122 and C-0100255, are held by production as a part of communitization agreements, and adopt Judge Rampton's recommended decision as to all other leases involved."

[1] Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or suspension of the lease. Harpel Drilling Co., 74 IBLA 228 (1983). The factual question of whether appellant's leases had expired at the end of their term was the subject of hearing and the recommended decision, which is appended hereto as Appendix "A," is adopted as the decision of this Board, except as herein modified.

[2] Section 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), provides in pertinent part:

> Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: Provided, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the land not committed as of the effective date of unitization: Provided, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities. [Emphasis in original.]

The clear language of this section mandates that a commitment of a portion of a lease to a unit effects segregation and there remains only the ministerial action by BLM to assign a new serial number to designate the segregated lease. Conoco, Inc., 80 IBLA 161, 91 I.D. 181 (1984); Marathon Oil Co., 78 IBLA 102 (1983); American Resources Management Corp., 36 IBLA 157 (1978); 43 CFR 3107.4-3. The statute provides that the segregated lease embracing the lands committed to the unit remains in effect so long as the lease is committed to the unit provided production is had prior to the expiration date of the lease. Appellant has identified portions of

3/ See footnote 1.

lease Nos. C-0100022, C-0100122, and C-0100255 as being within land embraced in communitization agreements. This fact has been admitted by counsel for BLM. Therefore, to the extent that said leases are committed to communitization agreements, said leases have been maintained by reason of production from wells within the unit and were not terminated, and Judge Rampton's recommended decision is hereby amended to reflect this fact.

[3] At page 15 of Judge Rampton's recommended decision, he states, at the end of the first paragraph: "Moreover, the regulations provide that only the Secretary may approve a suspension of leases in non-producing status. That authority is not delegated to any officer below the Secretariat level." This statement is in error. 220 D.M. 4.1E; see Sierra Club, et al., 80 IBLA 251 (1984), aff'd., Getty Oil Co., v. Clark, No. C84-0320-B (D. Wyo. July 18, 1985), slip op. at 28-29. Therefore, the above-quoted portion of the decision is hereby stricken, and Appendix "A" has been so marked. 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended decision of Judge Rampton, as modified by this decision, is adopted as the decision of this Board.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge

4/ At pages 13-14 of his decision, Judge Rampton quotes from Jicarilla Apache Tribe v. Andrus, 687 F.2d 1324, 1341 (10th Cir. 1982), which is the correct spelling and citation for the case, rather than as cited by Judge Rampton. Further, the last sentence of the first paragraph and the second paragraph of the quotation are not from the text of the court's opinion, but appear to be a part of Judge Rampton's own text.

APPENDIX A

September 19, 1984

AMERICAN RESOURCES MANAGEMENT CORPORATION (ARMCO)	:	IBLA 82!797
	:	Involving Oil and Gas
Appellant	:	Leases
	:	
v.	:	C 0100022!A et al.
	:	
DEPARTMENT OF THE INTERIOR	:	
	:	
Respondent	:	

Appearances: Larry G. Reed, Esq. and Lucy J. Skiffington, Esq., Suitter, Axland, Armstrong and Hanson, Salt Lake City, Utah, for appellant

David Grayson, Esq., Assistant Regional Solicitor, U. S. Department of the Interior, Salt Lake City, Utah, for respondent

Before: Administrative Law Judge Rampton.

RECOMMENDED DECISION

This proceeding involves an appeal taken from a decision of the Acting Director, Minerals Management Service (formerly U.S.G.S.) dated August 28, 1978 (GS-110-O&G) affirming a determination of E. W. Guynn, District Engineer, to terminate Armco's interest in twenty-four Federal oil and gas leases located in Rio Blanco County, Colorado.

The lease were issued after 1960 for a primary term of ten years and later extended for two years to midnight September

1, 1977 and "so long thereafter as oil or gas is produced in paying quantities."

The decision to terminate was predicated on the failure of ARMCO to produce oil or gas in paying quantities or run a single successful flow test on or before September 1, 1977.

ARMCO has alleged that the production requirements were not achieved because it was prevented from compliance by unavoidable accidents, uncontrolled delays in transportation, actions of Federal agencies and its inability to obtain the necessary materials and equipment.

By order dated May 12, 1983, the Interior Board of Land Appeals remanded this appeal for a fact finding hearing on the following issues as stipulated by the parties:

(A) Assuming natural gas is present in one of the four wells, has plaintiff ARMCO satisfied the requirement that a well was, on September 1, 1977, capable of producing oil and gas in paying quantities?

(B) Did defendant unreasonably delay an issuance of drilling permit?

(C) Assuming defendant unreasonably delayed the issuance of drilling permits, what is the legal effect of this delay?

(D) Was plaintiff unavoidably delayed in the development of the subject leases?

(E) Assuming plaintiff was unavoidably delayed in the development of the leases do the unavoidable delay and "unavoidable delays" provisions of the unit agreement serve to extend or prevent the termination of the leases?

(F) Could any of the four wells have been rendered capable of production had plaintiff not been ordered to terminate the work on the wells on September 1, 1977?

In the remand order the Board held that the burden of proving issues A through F by a preponderance of the evidence is assigned to ARMCO. Further, the issue of whether the initial term of the lease expired on midnight of August 31, 1977 or at midnight September 1, 1977 has never been specifically resolved and the Board directed that that question be addressed.

A hearing was held on February 7, 1984. Only one witness, Mr. Keith M. Hebertson, Vice President for ARMCO, whose duties include supervision of oil and gas operations testified for the appellant. He analyzes drilling logs and bond analyses to determine whether drilling should begin. Based on the logs and other data, it is his decision whether to set pipe and complete the well.

In the summer of 1977 he had occasion to visit every well drilled, particularly at the time a well was ready for completion.

In the Blair Mesa unit difficulties were encountered during the drilling phase of the operation. The drilling of 4 wells was completed sometime around the middle of July 1977. Mr. Hebertson had commitments in another area and so the four wells were left uncompleted with the pipe set and cemented until the middle of August when the company went back and tried for their completion.

The wells were 18-1-S, 17-1, 17-2 and 17-3. All were drilled to at least 2,000 feet. Casing was set in the 18-S well and then it was left until September 2. There were no problems encountered in setting the casing. No other particu !

lar problems were encountered on the 18-1 other than some loss circulation in the drilling fluid and enlargement of the hole during the work period. That enlargement may have contributed to the later failure of the cement job.

No other particular problems occurred in the drilling phase of the wells. Problems were encountered after the completion phase started. The 17-2 and 17-1 were perforated at the same time to save mileage costs since mileage was charged every time anyone was taken to the wells. After pipe was submitted in the hole of the 17-1, there was no means of communicating the hole with the formation until some holes were made in the pipe. A shaped charge was lowered in the hole, fired, knocking a hole in the pipe and through the cement to effect communication with the formation. The penetration might have been as much as 10 inches. The perforations were completed on all four wells on July 13, 1977.

Bond logs were run on each well to determine the condition of the cement jobs. A bad job had been done on the 17-2 and required squeezing, which consists of isolating a zone and pumping cement under high pressure into the rest of the zone thus forcing cement into the area where none had reached before. Mr. Hebertson squeezed 30 sacks in the 17-2 and on

July 30 squeezed four more to seal it off from ground water or perforated water.

It was not until August 6 that the cement was cleaned out of the 17-2 and another bond log run. Testing was done on August 8 and no significant fluid or gas entry found. On August 9 the well was shut in overnight. A tubing pressure of 10 pounds and a casing pressure of 50 pounds indicated that something had come into the well bore overnight to replace the water. No oil was seen so he concluded the invasion must have been gas. He worked with the well further trying to cure the cement problem until August 25 when he decided to move to another well (in order to fulfill his commitment to establish production on the Blair Mesa Unit by midnight September 1).

Squeezing was done on 17-1 from August 26 to August 31. Two rigs were on site and a Schlumberger analysis showed that all three wells had zones capable of producing gas. The wells were drilled with a heavier drilling fluid in anticipation that they might otherwise have a dangerous blow out. The heavier fluid causes more of the drilling fluid to go into the formation during the operation, thereby suppressing the natural gas indication. The heavier fluid will also

damage the formation, causing partial block. A good stimulation job was necessary in order to get past the damage zone in the formation without treating the well.

Stimulation methods are hazardous to cement jobs because in the process of splitting apart the formation, the cement can just as easily crack, dissolve and break.

On September 1, thinking he still had nearly 24 hours to establish commercial production, Mr. Hebertson connected Halliburton, a specialized service company, to 17-3. This company provided the pumping equipment and chemical expertise to create the pressure needed for a stimulation.

Mr. Hebertson called the unit operations section, U.S.G.S. in Casper and was informed that the unit had expired, and that his operations were in trespass and to do nothing more. In compliance with these instructions, he released Halliburton and started to abandon the location. The equipment needed to complete the well was removed. According to the Schlumberger log on the 17-3, he concluded that there were at least four zones in the well suitable for hydrocarbon production that would have produced in paying quantities if he had been allowed to complete. His opinion

was based on comparison with other wells already in production and his computer analysis of possible productivity. He thought that the 17-3 would have been commercial because it was near to a number of wells in the same formation already commercially productive and the characteristics of the wells in his unit were not too different from those already producing.

He admitted that nothing was recovered from the four wells except gas cut water from 17-1.

After he released Halliburton on September 1, he received a telephone call at 11:30 a.m. from Mr. Guynn, the District Engineer, who said that everyone in the Casper office had discussed the situation and that the operation could proceed until midnight. However, Mr. Hebertson was unable to resume operation for at least four or five days because he had already sent the work rig to another well. In his opinion, the well could have otherwise been completed by midnight on September 1.

On cross-examination he could not recall when the Applications to Drill (APD's) were approved but was of the opinion that even though they had been approved in January or

February they probably could not have gone on site with drilling equipment much before June 1 because of the weather and possible damage to the environment.

When asked how long it normally takes between the time drilling is commenced and completion, he stated that because the wells were shallow the drilling time would have been perhaps 8 days per well. They had one drill working and moved it from one well to the other as quickly as possible.

In the September 1 conversation with Mr. Guynn he had asked for time to regroup and finish the well. He was given an extension but was restricted to working on the 17-1 and 18-1-S, both of which proved to have cement job problems. He moved a rig immediately to the 18-1-S and tried to complete it but the primary cement job broke when it was stimulated. Thus, although he was allowed to do the additional work he was not allowed to do it on the most promising well, 17-3.

Asked if there were any reason why he pursued four wells rather than concentrate on one well, he stated that the drilling operation was financed with a private placement and in order to validate he had to drill five wells in the

calendar year of 1977, establishing commercial production with one. The drilling of four wells was done with the idea of getting at least one commercial producer.

In his affidavit filed with the appeal Mr. Hebertson had asserted that acts of God, beyond his control, had prevented the well completions. When asked for specific instances, he gave one instance where a work rig necessary for testing had fallen off a mountain road. The driver, through too much work and too many nights in town, had a lapse of memory and drove over the soft edge of the road, which caved in. However, Mr. Hebertson admitted that this kind of accident is not unusual and occurs on nearly every well because the people involved are under contract so he has no direct control over them.

He also cited a second accident which delayed the work. He was going in on one well to set a cement retainer. The service crew dropped the retainer down the hole where the fluid level was 300 or 400 feet below the ground surface. When it ran into the water the pressure required to set it occurred and it had to be drilled out. Normally this takes perhaps a day but in this well it took three days.

When questioned about the delays in the issuance of the permit he stated they were delayed but didn't recall how long it took. Permits normally cleared in 30 days but in this instance, he thought clearance took 60 days or more. He stated that at one time a telephone call could clear a permit, but now with addition of various rules and regulations it takes 10 days to 20 weeks.

Edgar W. Guynn was called as a witness for the Bureau. He is currently Chief, Branch of Fluid Minerals with the BLM and has had extensive experience in both private industry and the Government. He was the official who determined that the leases should be cancelled for lack of production. He stated that no information was given to him by the September 1 date but that some was submitted by September 19. He had told ARMCO to give him anything indicating productivity but the information given was inadequate to show the wells were capable of producing in paying quantities. Rather it was merely an analysis submitted by the Schlumberger Well and Logging Company and showed only water saturation and porosity.

Although the APD's were approved May 12, 1977 no activity was started until some time in June. Mr. Guynn stated there was no delay in his office that affected ARMCO's activities.

He had no knowledge of the telephone directive September 1, 1977 from his office when Mr. Hebertson was told to cease activity. However, in his opinion even if activity had ceased, it would have no effect. ARMCO knew they were to have production in paying quantities by September 1. Even after that expiration date ARMCO was allowed back on the ground and asked for any kind of float test indicating the well was physically capable of production. If that were supplied permission would then be granted and ARMCO given sufficient time for a well clean up and 4 point back pressure test. What his office needed, he stated, was a conclusive test supporting production on a unit basis. The submission of the Schlumberger test was made on September 19. However, this test is a tool for evaluation and location of producing zones. It is not conclusive proof that the well is a producer.

After September 19, ARMCO made no request for additional time on the basis it had been unreasonably delayed by the U.S.G.S.

Findings and Conclusions

The parties are in agreement that ARMCO had until midnight September 1, 1977 to complete a well capable of producing

oil and gas. The information obtained by Mr. Hebertson on September 1 from someone in the U.S.G.S. Office in Casper that the unit had already expired and he was in trespass was in error. That fact was admitted by Mr. Guynn when he rescinded the instructions in a call to Mr. Hebertson on 11:30 a.m. on the same date. At issue is whether the misinformation prevented the completion of the producing well before midnight, since Halliburton had been released and the equipment needed to complete a well had moved on to another location. In [J]icarilla Apache Tribe v. Andrus, 68 F.2d 1324, 1341 (10th Cir. 1982) the court held:

> When a lessor actively asserts to a lessee that his lease is terminated or subject to cancellation, the obligations of the lessee to the lessor are suspended during the time such claims of forfeiture are being asserted. The remedy is a tolling.
>
> It was also held in Continental Oil Company et al. v. Osage Oil and Refining Company et al., 69 F.2d, 19, 24-25 (10th Cir., 1934) that when the lessor prevents the lessee from pursuing productivity for a time prior to the expiration of

the lease, the remedy is to add an equivalent time onto the lease.

As applied to this case, ARMCO had a right to be relieved from the time limit for 13 1/2 hours, i.e., to 12 midnight.

In this instance, ARMCO was allowed until September 19 to submit the required information establishing productive capacity. The additional 18 days appears to have been sufficient time for ARMCO to get equipment back on the lease and resume its efforts. However, Mr. Hebertson testified that in the oral extension granted him on September 1, he was restricted to working on the 17-1 and 18-1-S wells; that he moved the rig immediately to the 18-1-S well, tried to complete it but the primary cement job broke under stimulation and that he was not allowed to do the additional work on 17-3, the most promising well. The testimony as to this restriction was neither corroborated nor disputed by Mr. Guynn. He testified only that he had given ARMCO until September 19 to give him any information indicating productivity and that the information submitted was inadequate to show the wells were capable of producing in paying quantities.

Section 17(f) provides that no lease issued "shall expire because operations or production is suspended under any order or with the consent of the Secretary." Even if one assumes that the telephone call from the Casper office constituted such a "suspension order," the Departmental regulations 43 CFR 3103.3-8(a) require a suspension application is to be submitted by the lessees, in triplicate, to the oil and gas supervisor. If the request is not filed prior to the lease's termination, the lease is totally ended and there is nothing for the Department to suspend. See Jones-O'Brien, Inc., 85 I.D. 89, 95 (1978). ARMCO never filed for suspension.

It would appear then that the appellant has no legal grounds to assert that the telephone conversation on the morning of September 1 can serve to prevent the tolling of the requirement to produce. A non-producing oil and gas lease expires and cannot be retrosuspended without a suspension application pending at the expiration date. Jones-O'Brien, Inc., supra, held that the filing of an application to drill and a U.S.G.S. delay in acting upon that application does not

create a de facto suspension. Further, if a lease is in a non-producing status, only the Secretary of Interior can suspend and only then in the interests of conservation contemplated under Section 17(f). Even so, ARMCO was allowed until September 19 to supply information showing production. The Schlumberger analysis submitted shows only a possibility, not proof of production capability.

As to the alleged actions of the Minerals Management Service delays, nothing in the testimony offered by Mr. Hebertson substantiated these allegations. ARMCO's application for approval of the unit agreement was mailed to the M.M.S. on February 17, 1977 but approval was delayed because appellant had failed to notify all the parties having an interest in the leases as required by 30 CFR 226.5. M.M.S. approved the unit agreement of April 19, 1977, promptly after the appellant complied with all applicable requirements. The appellant did not commence drilling within the unit prior to its approval and did not submit an archeological report requisite to drilling approval until April 25, 1977. Approval to commence drilling was given May 12, 1977 but it was not until June 3, 1977 that ARMCO began its drilling program.

The difficulties encountered in drilling were mostly due to the cement failures when stimulated. One delay was experienced when a drilling rig fell because the driver of the rig drove too close to the edge of the road. Mr. Hebertson, however, admitted that this was not an unusual occurrence and could be expected on nearly every job.

In sum, I find no evidence of significant delays experienced by ARMCO through any actions or inaction by M.M.S. personnel which might relieve ARMCO from the production requirements. Production has been defined as having the capability of bringing oil and gas or minerals to the surface. When separation from the earth has been completed production is completed. See W. S. Hatch Company v. The Public Service Commission, 277 P. 2.d 809, 813 (1954). In the instant case, timely proof of production capability was not shown. The problems encountered were not due to the delay by any action of the M.M.S. personnel but rather were to be expected in almost every drilling operation. ARMCO accepted the lease with a full knowledge of the time within which they

were required to perform. Given these circumstances, I conclude that the decision of the M.M.S. dated August 28, 1978 must be sustained.

Respectfully submitted,

John R. Rampton, Jr.
Administrative Law Judge

APPEAL INFORMATION

There is no appeal provided. Exceptions to the recommended decision may be filed with the Interior Board of Land Appeals.